

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

THOMAS P. FITZGERALD,

Plaintiff,

Case No. 08-10784

v.

Honorable David M. Lawson

H&R BLOCK FINANCIAL ADVISORS, INC.,
and H&R BLOCK, INC.,

Defendants.

/

**DEFENDANTS' EX PARTE MOTION AND
BRIEF TO FILE BRIEF IN EXCESS OF TWENTY PAGES**

H&R Block Financial Advisors, Inc., (“HRBFA”) and H&R Block, Inc., (“HRB”), pursuant to E.D. Mich. LR 7.1(c)(3) respectfully ask this Court to enter an order permitting it to file a Response Brief to Plaintiff’s Motion for Order Confirming Arbitration Award and a Brief in Support of its Motion to Stay Confirmation of Arbitration Award, to Stay Arbitration Award Itself and to Vacate Arbitration Award in excess of the page limits set forth in E.D. Mich. LR 7.1(c) for the following reasons:

1. Plaintiff Thomas P. Fitzgerald asserted claims against HRB and HRBFA under the Employee Retirement Income Security Act (“ERISA”) against the wrong parties and in the wrong forum. The legal issues were fully briefed before the Arbitration Panel, and the Arbitration Panel manifestly disregarded the law in asserting jurisdiction over claims that were not properly before it and entering an awarded against the wrong parties.

2. On May 2, 2005, Fitzgerald initiated an arbitration action against HRB and HRBFA in connection with the termination of his employment, in which he sought the value of

certain stock options and severance benefits. Fitzgerald sought to add the H&R Block Severance Plan and HRB Management, Inc., the named Plan Administrator and Plan Sponsor. Judge Rosen denied their request in E.D. Mich. case no. 05-74768.

3. Fitzgerald initiated the arbitration action against HRB and HRBFA before the NASD Dispute Resolution, Inc., the dispute resolution division of the Financial Industry Regulatory Authority Dispute Regulation (“FINRA”, formerly NASD), by filing a Statement of Claim, which disclosed the confidential settlement negotiations between counsel, in the case of Thomas P. Fitzgerald, Claimant, v. H&R Block Financial Advisors, Inc., and H&R Block, Inc., Case No. 05-02411.

4. Fitzgerald sought to prove at the hearing that his former employer, HRBFA, and its parent corporation, HRB, are liable to him for the value of stock options and severance benefits based on breach of contract, ERISA and a handful of other theories. The relevant law did not support Fitzgerald’s position. Nevertheless, on February 20, 2008 the Arbitration Panel evidenced a manifest disregard of the applicable law and issued an award in Fitzgerald’s favor that included \$3,014,370.50 in compensatory damages, \$466,565.62 in interest and \$481,910.79 in attorney’s fees pursuant to a nonexistent Michigan statute. Moreover, the Arbitration Panel apparently found HRB and HRBFA liable to Fitzgerald under ERISA, even though the ERISA plan was not a party to the arbitration. The Arbitration Panel accordingly entered an award against the wrong parties.

5. Fitzgerald has filed a motion to confirm the arbitration award, and HRB and HRBFA seek an order vacating the February 20, 2008 Arbitration Award of over \$3,900,000.00, along with interest and attorney fees, issued by the FINRA Arbitration Panel.

6. Due to the number and nature of claims involved, HRB and HRBFA cannot adequately address the issues involved in the brief length authorized by the local rules.

WHEREFORE, Defendant asks this court to permit it to file a Response Brief to Plaintiff's Motion for Order Confirming Arbitration Award and a Brief in Support of its Motion to Stay Confirmation of Arbitration Award, to Stay Arbitration Award Itself and to Vacate Arbitration Award in not to exceed 35 pages of text. A proposed order is attached as Exhibit 1, and is being submitted through the ECF procedures for submitting proposed orders.

VERCRUYSSE MURRAY & CALZONE, P.C.

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Dated: March 10, 2008

CERTIFICATE OF SERVICE

I hereby certify that on March 10, 2008, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the following: Patrice S. Arend, and I hereby certify that I have mailed by United States Postal Service the paper to the following non-ECF participants: none.

VERCRUYSSE MURRAY & CALZONE, P.C.

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Dated: March 10, 2008